HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 353 OF 2005

Dt. 28.1.2006

Between:

Sri Sai Srinivasa Constructions

…Appellant

and

Government of Adnhra Pradesh Roads and Buildings Department and others

…Respondents

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE R.SUBHASH REDDY

W.A.NO. 353 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

The appellant filed a writ petition which has been dismissed. Hence this appeal has been filed. His grievance is that though he participated in tender process as a result of tender notification issued by 2nd respondent, his tender was not being opened and this action

of the 3rd respondent was illegal.

A notification was issued by the 2nd respondent inviting tenders for various works in the State of Andhra Pradesh. The writ petitioner gave his bid for ten works. According to the petitioner, he was eligible in accordance with the criteria fixed in the tender notification. He submitted his tender. The petitioner firm had also experience certificate which has been issued by Executive Engineer and counter-signed by the Superintending Engineer. He had shown the quantity of work he had executed and also the financial value of such works. The technical bid was opened on 24.12.2004 and the financial bid was opened on 1.2.2005. The price bid of the petitioner was not opened, whereas the tenders of all other bidders were opened on 1.2.2005. The petitioner approached the 3rd respondent to know the reasons for not opening his price bid, but no reasons were disclosed to him. Therefore he filed the writ petition.

The respondents filed their counter-affidavit in which they submitted that the criteria was fixed in the tender notification for opening the price bids. The technical bids were opened by the Superintending Engineer on 27.12.2004. The petitioner satisfied the criteria and was declared eligible and his price bid was opened on 4.1.2005 and recommended to the Engineer-in-Chief (R&B) Administration & NABARD for acceptance. This was with respect to NIT: 111/04-05. In respect of NIT: 112/04-05 the price bids were opened on 3.1.2005, the petitioner firm stood at L2 position, therefore the lowest tender was recommended. While the technical bids for the works in respect of NIT: 114/04-05, NIT: 118/04-05 and NIT:119/04-05 were under process, a petition was received mentioning that the certificate furnished by the writ petitioner was false. The respondents called for information regarding the genuineness of the certificates issued by various authorities and according to the information received, the genuineness of experience certificate was confirmed except for a certificate from the Executive Engineer (R&B), Cuddapah. The Executive Engineer had furnished the work wise and

year wise break up, both physical and financial, for the works executed by the petitioner firm on Rajampet-Kadiri – Tumkur road after verifying the connected M. books and informed that out of four works mentioned in the certificate, the works at Sl.Nos. 3 and 4 tallied with minute variation and in respect of works at Sl.Nos. 1 and 2 the total quantities tallied with M. Books with minute variation, but these works were executed in two different years i.e., 2002-03 and 2003-04. Therefore the certificate furnished by the petitioner firm showing the quantity of work executed in one year i.e., 2003-04 was not genuine. The certificate had been rejected and even office copy of certificate was not available in the office records. The certificate produced by the petitioner had been issued by the Superintending Engineer (R&B) Circle, Cuddapah himself in his individual capacity on 2.6.2004 without reference to records. The Superintending Engineer who issued the certificate on 2.6.2004 had retired from service on 30.6.2004. The petitioner firm furnished a certificate that was not genuine for all the works except for NIT 171/04-05. Since the petitioner firm had not done the quantity of work which was required to be done in terms of the tender conditions, the petitioner firm was disqualified for all the works as per G.O.Ms.No. 94, dt. 1.7.2003.

An additional affidavit was filed by the writ petitioner to the counter filed by the respondents stating therein that the concerned Executive Engineer had issued a certificate and it had been counter-signed by the Superintending Engineer and it was the mistake of the concerned officials that they had mentioned that the work had been done in two financial years, but the Executive Engineer who issued the certificate to the petitioner firm had stated that the work had been done for the year 2003-04. He stated that there appear to be bonafide mistake on the part of concerned officials. The petitioner firm did not get any advantage by furnishing the certificate which was alleged to be not genuine and for the mistake of the concerned officials, the writ petitioner could not be penalized. The writ petitioner before this Court as well as before the learned single Judge contended that there was a mistake committed by the respondents in

issuing the certificate, therefore he should not be held responsible for this mistake. But we feel that the learned single Judge was right in dismissing the writ petition as the respondents had shown that the petitioner was not eligible and he had not executed the works within one year to the extent it was required under the tender documents. He had in fact produced a certificate and tried to show that he was eligible by combining the works he executed for a period of two years i.e., 2002-03 and 2003-04. The learned single Judge held,

> "The 3rd respondent issued a Notice Inviting Tenders (NIT for short) for various works in the State of A.P. In all these tender notifications one of the eligibility criteria for opening of the price bid is that the applicant in its name and style should have during the preceding 5 financial years (i.e., from 1999-2000 to 2003-04) satisfactorily completed as a prime contractor similar works of value not less than the amount as notified in the NIT. The petitioner admittedly satisfied all the eligibility criteria for opening of the price bid except the certificate issued by the competent authority in relation to the works carried out by the petitioner for the financial year 2003-04. The experience certificate issued by the Executive Engineer counter signed by the Superintending Engineer dated 2.6.2004 would go to show that the petitioner has satisfactorily completed the four works in R & B Division, Cuddapah during the year 2003-04. Those four works are (1) Improvements to carriage way in Rajampet Kadiri – Tumukur road from Km 54/0 to 58/0, (2) Improvements to carriage way in Rajampet – Kadiri – Tumukur road from Km 58/0 to 63/0, (3) Improvements to carriage way in Rajampet – Kadiri – Tumukur road from Km 63/0 to 68/0 and (4) Improvements to carriage way in Rajampet – Kadiri – Tumukur road from Km 68/0 to 73/0. According to the petitioner, those works have been carried out by it in one calender year from January 2003 to September, 2003. There cannot be any dispute that the financial year commences from 1st April to 31st March of the succeeding year. Instead of mentioning that the work has been done in two financial years, the then Executive Engineer has issued the certificate that the work has been done in the year 2003-04. The said four works were executed in two financial years admittedly i.e., 2002-03 and 2003-04."

The arguments made by the learned counsel for the petitioner are same which were made before the learned single Judge that there was a bonafide mistake on the part of the Executive Engineer who issued the certificate. We do not find that there has been any bonafide mistake. The certificate was issued which is not based on any record. Copy of the certificate was not available in the office of Superintending Engineer and even if it was a mistake, the negligent mistake could not be allowed to be corrected on the basis of equities. The fact of the matter is that the petitioner was not eligible in terms of the conditions of tender documents. In this connection reliance is placed on a judgment of the Supreme Court reported in *W.B. State Electricity Board Vs. Patel Engineer Co*. .

For these reasons, we do not find merit in the appeal which is accordingly dismissed. As the writ appeal is dismissed, no orders are necessary to be passed in the implead petitions which are accordingly dismissed. No costs.

Dt.28.1.2006 _____

BILAL NAZKI J.

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R.SUBHASH REDDY